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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Elijah McKinley,

Plaintiff,

v.

City of Los Angeles; Officer Kwon; and
DOES 1 through 10 inclusive,

Defendants.

CASE NO. 2:23-cv-01303-FMO-MAA
Hon. Fernando M. Olguin; 1st St CH – Ctrm. 6D
Hon. Mag. Maria A. Audero; Roybal – Ctrm. 690

STIPULATED PROTECTIVE ORDER

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure

1 and from use for any purpose other than prosecuting this litigation may be warranted.
2 Accordingly, the parties hereby stipulate to and petition the Court to enter the following
3 Stipulated Protective Order. The parties acknowledge that this Stipulated Protective
4 Order does not confer blanket protections on all disclosures or responses to discovery
5 and that the protection it affords from public disclosure and use extends only to the
6 limited information or items that are entitled to confidential treatment under the
7 applicable legal principles. The parties further acknowledge, as set forth in Section 13.3
8 below, that this Stipulated Protective Order does not entitle them to file confidential
9 information under seal; Local Rule 79-5 sets forth the procedures that must be followed
10 and the standards that will be applied when a party seeks permission from the Court to
11 file material under seal.

12 **2. GOOD CAUSE STATEMENT**

13 WHEREAS Plaintiff ELIJAH MCKINLEY (“Plaintiff”) is seeking materials and
14 information that Defendant CITY OF LOS ANGELES (“City”) maintains as
15 confidential, including but limited to, video recordings, audio recordings, other
16 confidential information and documents regarding this incident, and other administrative
17 materials and information currently in the possession of the City and which the City
18 believes need special protection from public disclosure and from use for any purpose
19 other than prosecuting this litigation.

20 The City asserts that the confidentiality of the materials and information sought by
21 Plaintiff is recognized by California and federal law, as evidenced inter alia by
22 California Penal Code section 832.7 and *Kerr v. United States Dist. Ct. for N.D. Cal.*,
23 511 F.2d 192, 198 (9th Cir. 1975), *aff’d*, 426 U.S. 394 (1976). The City has not publicly
24 released the materials and information referenced above except under protective order or
25 pursuant to a court order, if at all. These materials and information are of the type that
26 has been used to initiate disciplinary action against Los Angeles Police Department
27 (“LAPD”) officers, and has been used as evidence in disciplinary proceedings, where the
28 officers’ conduct was considered to be contrary to LAPD policy.

1 The City contends that absent a protective order delineating the responsibilities of
 2 nondisclosure on the part of the parties hereto, there is a specific risk of unnecessary and
 3 undue disclosure by one or more of the many attorneys, secretaries, law clerks,
 4 paralegals and expert witnesses involved in this case, as well as the corollary risk of
 5 embarrassment, harassment and professional and legal harm on the part of the LAPD
 6 officers referenced in the materials and information. The unfettered disclosure of the
 7 materials and information, absent a protective order, would allow the media to share this
 8 information with potential jurors in the area, impacting the rights of Defendant herein to
 9 receive a fair trial. Accordingly, to expedite the flow of information, to facilitate the
 10 prompt resolution of disputes over confidentiality of discovery materials, to adequately
 11 protect information the parties are entitled to keep confidential, to ensure that the parties
 12 are permitted reasonable necessary uses of such material in preparation for and in the
 13 conduct of trial, to address their handling at the end of the litigation, and to serve the
 14 ends of justice, a protective order for such information is justified in this matter. It is the
 15 intent of the parties that information will not be designated as confidential for tactical
 16 reasons and that nothing be so designated without a good faith belief that it has been
 17 maintained in a confidential, non-public manner, and there is good cause why it should
 18 not be part of the public record of this case.

19 20 **3. DEFINITIONS**

21 3.1. Action: **Elijah McKinley v. City of Los Angeles, et al.; 2:23-cv-01303-**
 22 **FMO-AFM**

23 3.2. Challenging Party: A Party or Nonparty that challenges the designation of
 24 information or items under this Stipulated Protective Order.

25 3.3. “CONFIDENTIAL” Information or Items: Information (regardless of how
 26 it is generated, stored or maintained) or tangible things that qualify for
 27 protection under Federal Rule of Civil Procedure 26(c), and as specified
 28 above in the Good Cause Statement.

- 1 3.4. Counsel: Outside Counsel of Record and In-House Counsel (as well as their
2 support staff).
- 3 3.5. Designating Party: A Party or Nonparty that designates information or
4 items that it produces in disclosures or in responses to discovery as
5 “CONFIDENTIAL.”
- 6 3.6. Disclosure or Discovery Material: All items or information, regardless of
7 the medium or manner in which it is generated, stored, or maintained
8 (including, among other things, testimony, transcripts, and tangible things),
9 that is produced or generated in disclosures or responses to discovery in this
10 matter.
- 11 3.7. Expert: A person with specialized knowledge or experience in a matter
12 pertinent to the litigation who has been retained by a Party or its counsel to
13 serve as an expert witness or as a consultant in this Action.
- 14 3.8. In-House Counsel: Attorneys who are employees of a party to this
15 Action. In-House Counsel does not include Outside Counsel of Record or
16 any other outside counsel.
- 17 3.9. Nonparty: Any natural person, partnership, corporation, association, or
18 other legal entity not named as a Party to this action.
- 19 3.10. Outside Counsel of Record: Attorneys who are not employees of a party to
20 this Action but are retained to represent or advise a party to this Action and
21 have appeared in this Action on behalf of that party or are affiliated with a
22 law firm which has appeared on behalf of that party, and includes support
23 staff.
- 24 3.11. Party: Any party to this Action, including all of its officers, directors,
25 employees, consultants, retained experts, In-House Counsel, and Outside
26 Counsel of Record (and their support staffs).
- 27 3.12. Producing Party: A Party or Nonparty that produces Disclosure or
28 Discovery Material in this Action.

1 3.13. Professional Vendors: Persons or entities that provide litigation support
2 services (e.g., photocopying, videotaping, translating, preparing exhibits or
3 demonstrations, and organizing, storing, or retrieving data in any form or
4 medium) and their employees and subcontractors.

5 3.14. Protected Material: Any Disclosure or Discovery Material that is designated
6 as “CONFIDENTIAL.”

7 3.15. Receiving Party: A Party that receives Disclosure or Discovery Material
8 from a Producing Party.

9
10 **4. SCOPE**

11 The protections conferred by this Stipulated Protective Order cover not only
12 Protected Material, but also (1) any information copied or extracted from Protected
13 Material; (2) all copies, excerpts, summaries, or compilations of Protected Material; and
14 (3) any testimony, conversations, or presentations by Parties or their Counsel that might
15 reveal Protected Material.

16 Any use of Protected Material at trial shall be governed by the orders of the trial
17 judge. This Stipulated Protective Order does not govern the use of Protected Material at
18 trial.

19
20 **5. DURATION**

21 Even after final disposition of this litigation, the confidentiality obligations
22 imposed by this Stipulated Protective Order shall remain in effect until a Designating
23 Party agrees otherwise in writing or a court order otherwise directs. Final disposition
24 shall be deemed to be the later of (1) dismissal of all claims and defenses in this Action,
25 with or without prejudice; and (2) final judgment herein after the completion and
26 exhaustion of all appeals, rehearings, remands, trials, or reviews of this Action,
27 including the time limits for filing any motions or applications for extension of time
28 pursuant to applicable law.

1
2 **6. DESIGNATING PROTECTED MATERIAL**

3 6.1. Exercise of Restraint and Care in Designating Material for Protection.

4 Each Party or Nonparty that designates information or items for
5 protection under this Stipulated Protective Order must take care to limit any
6 such designation to specific material that qualifies under the appropriate
7 standards. The Designating Party must designate for protection only those
8 parts of material, documents, items, or oral or written communications that
9 qualify so that other portions of the material, documents, items, or
10 communications for which protection is not warranted are not swept
11 unjustifiably within the ambit of this Stipulated Protective Order.

12 Mass, indiscriminate, or routinized designations are prohibited.
13 Designations that are shown to be clearly unjustified or that have been
14 made for an improper purpose (e.g., to unnecessarily encumber the case
15 development process or to impose unnecessary expenses and burdens on
16 other parties) may expose the Designating Party to sanctions.

17 6.2. Manner and Timing of Designations.

18 Except as otherwise provided in this Stipulated Protective Order (see,
19 e.g., Section 6.2(a)), or as otherwise stipulated or ordered, Disclosure or
20 Discovery Material that qualifies for protection under this Stipulated
21 Protective Order must be clearly so designated before the material is
22 disclosed or produced.

23 Designation in conformity with this Stipulated Protective Order
24 requires the following:

- 25 (a) For information in documentary form (e.g., paper or electronic
26 documents, but excluding transcripts of depositions or other pretrial
27 or trial proceedings), that the Producing Party affix at a minimum,
28 the legend “CONFIDENTIAL” to each page that contains protected

1 material. If only a portion or portions of the material on a page
2 qualifies for protection, the Producing Party also must clearly
3 identify the protected portion(s) (e.g., by making appropriate
4 markings in the margins).

5 A Party or Nonparty that makes original documents available
6 for inspection need not designate them for protection until after the
7 inspecting Party has indicated which documents it would like copied
8 and produced. During the inspection and before the designation, all
9 of the material made available for inspection shall be deemed
10 “CONFIDENTIAL.” After the inspecting Party has identified the
11 documents it wants copied and produced, the Producing Party must
12 determine which documents, or portions thereof, qualify for
13 protection under this Stipulated Protective Order. Then, before
14 producing the specified documents, the Producing Party must affix
15 the legend “CONFIDENTIAL” to each page that contains Protected
16 Material. If only a portion or portions of the material on a page
17 qualifies for protection, the Producing Party also must clearly
18 identify the protected portion(s) (e.g., by making appropriate
19 markings in the margins).

- 20 (b) For testimony given in depositions, that the Designating Party
21 identify the Disclosure or Discovery Material on the record, before
22 the close of the deposition, all protected testimony.
- 23 (c) For information produced in nondocumentary form, and for any other
24 tangible items, that the Producing Party affix in a prominent place on
25 the exterior of the container or containers in which the information is
26 stored the legend “CONFIDENTIAL.” If only a portion or portions
27 of the information warrants protection, the Producing Party, to the
28 extent practicable, shall identify the protected portion(s).

1 6.3. Inadvertent Failure to Designate.

2 If timely corrected, an inadvertent failure to designate qualified
3 information or items does not, standing alone, waive the Designating
4 Party's right to secure protection under this Stipulated Protective Order for
5 such material. Upon timely correction of a designation, the Receiving Party
6 must make reasonable efforts to assure that the material is treated in
7 accordance with the provisions of this Stipulated Protective Order.

8
9 7. **CHALLENGING CONFIDENTIALITY DESIGNATIONS**

10 7.1. Timing of Challenges.

11 Any Party or Nonparty may challenge a designation of
12 confidentiality at any time that is consistent with the Court's Scheduling
13 Order.

14 7.2. Meet and Confer.

15 The Challenging Party shall initiate the dispute resolution process,
16 which shall comply with Local Rule 37.1 et seq., and with Section 4 of
17 Judge Audero's Procedures ("Mandatory Telephonic Conference for
18 Discovery Disputes").¹

19 7.3. Burden of Persuasion.

20 The burden of persuasion in any such challenge proceeding shall be
21 on the Designating Party. Frivolous challenges, and those made for an
22 improper purpose (e.g., to harass or impose unnecessary expenses and
23 burdens on other parties) may expose the Challenging Party to sanctions.
24 Unless the Designating Party has waived or withdrawn the confidentiality
25 designation, all parties shall continue to afford the material in question the
26

27
28 ¹ Judge Audero's Procedures are available at
<https://www.cacd.uscourts.gov/honorable-maria-audero>.

level of protection to which it is entitled under the Producing Party's designation until the Court rules on the challenge.

8. ACCESS TO AND USE OF PROTECTED MATERIALS

8.1. Basic Principles.

A Receiving Party may use Protected Material that is disclosed or produced by another Party or by a Nonparty in connection with this Action only for prosecuting, defending, or attempting to settle this Action. Such Protected Material may be disclosed only to the categories of persons and under the conditions described in this Stipulated Protective Order. When the Action reaches a final disposition, a Receiving Party must comply with the provisions of Section 14 below.

Protected Material must be stored and maintained by a Receiving Party at a location and in a secure manner that ensures that access is limited to the persons authorized under this Stipulated Protective Order.

8.2. Disclosure of "CONFIDENTIAL" Information or Items.

Unless otherwise ordered by the Court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated "CONFIDENTIAL" only to:

- (a) The Receiving Party's Outside Counsel of Record, as well as employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for this Action;
- (b) The officers, directors, and employees (including In-House Counsel) of the Receiving Party to whom disclosure is reasonably necessary for this Action;
- (c) Experts of the Receiving Party to whom disclosure is reasonably necessary for this Action and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);
- (d) The Court and its personnel;

- 1 (e) Court reporters and their staff;
- 2 (f) Professional jury or trial consultants, mock jurors, and Professional
- 3 Vendors to whom disclosure is reasonably necessary or this Action
- 4 and who have signed the “Acknowledgment and Agreement to be
- 5 Bound” (Exhibit A);
- 6 (g) The author or recipient of a document containing the information or a
- 7 custodian or other person who otherwise possessed or knew the
- 8 information;
- 9 (h) During their depositions, witnesses, and attorneys for witnesses, in
- 10 the Action to whom disclosure is reasonably necessary provided: (i)
- 11 the deposing party requests that the witness sign the
- 12 “Acknowledgment and Agreement to Be Bound” (Exhibit A); and
- 13 (ii) the witness will not be permitted to keep any confidential
- 14 information unless they sign the “Acknowledgment and Agreement
- 15 to Be Bound,” unless otherwise agreed by the Designating Party or
- 16 ordered by the Court. Pages of transcribed deposition testimony or
- 17 exhibits to depositions that reveal Protected Material may be
- 18 separately bound by the court reporter and may not be disclosed to
- 19 anyone except as permitted under this Stipulated Protective Order;
- 20 and
- 21 (i) Any mediator or settlement officer, and their supporting personnel,
- 22 mutually agreed upon by any of the parties engaged in settlement
- 23 discussions.

24

25 **9. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED**

26 **IN OTHER LITIGATION**

27 ///

28 ///

1 If a Party is served with a subpoena or a court order issued in other litigation that
 2 compels disclosure of any information or items designated in this Action as
 3 “CONFIDENTIAL,” that Party must:

- 4 (a) Promptly notify in writing the Designating Party. Such notification shall
 5 include a copy of the subpoena or court order;
- 6 (b) Promptly notify in writing the party who caused the subpoena or order to
 7 issue in the other litigation that some or all of the material covered by the
 8 subpoena or order is subject to this Stipulated Protective Order. Such
 9 notification shall include a copy of this Stipulated Protective Order; and
- 10 (c) Cooperate with respect to all reasonable procedures sought to be pursued by
 11 the Designating Party whose Protected Material may be affected.

12 If the Designating Party timely seeks a protective order, the Party served with the
 13 subpoena or court order shall not produce any information designated in this action as
 14 “CONFIDENTIAL” before a determination by the Court from which the subpoena or
 15 order issued, unless the Party has obtained the Designating Party’s permission. The
 16 Designating Party shall bear the burden and expense of seeking protection in that court
 17 of its confidential material and nothing in these provisions should be construed as
 18 authorizing or encouraging a Receiving Party in this Action to disobey a lawful directive
 19 from another court.

20
 21 **10. A NONPARTY’S PROTECTED MATERIAL SOUGHT TO BE**
 22 **PRODUCED IN THIS LITIGATION**

23 10.1. Application.

24 The terms of this Stipulated Protective Order are applicable to
 25 information produced by a Nonparty in this Action and designated as
 26 “CONFIDENTIAL.” Such information produced by Nonparties in
 27 connection with this litigation is protected by the remedies and relief
 28 provided by this Stipulated Protective Order. Nothing in these provisions

1 should be construed as prohibiting a Nonparty from seeking additional
 2 protections.

3 10.2. Notification.

4 In the event that a Party is required, by a valid discovery request, to
 5 produce a Nonparty's confidential information in its possession, and the
 6 Party is subject to an agreement with the Nonparty not to produce the
 7 Nonparty's confidential information, then the Party shall:

- 8 (a) Promptly notify in writing the Requesting Party and the Nonparty
 9 that some or all of the information requested is subject to a
 10 confidentiality agreement with a Nonparty;
- 11 (b) Promptly provide the Nonparty with a copy of the Stipulated
 12 Protective Order in this Action, the relevant discovery request(s), and
 13 a reasonably specific description of the information requested; and
- 14 (c) Make the information requested available for inspection by the
 15 Nonparty, if requested.

16 10.3. Conditions of Production.

17 If the Nonparty fails to seek a protective order from this Court within
 18 fourteen (14) days after receiving the notice and accompanying
 19 information, the Receiving Party may produce the Nonparty's confidential
 20 information responsive to the discovery request. If the Nonparty timely
 21 seeks a protective order, the Receiving Party shall not produce any
 22 information in its possession or control that is subject to the confidentiality
 23 agreement with the Nonparty before a determination by the Court. Absent a
 24 court order to the contrary, the Nonparty shall bear the burden and expense
 25 of seeking protection in this Court of its Protected Material.

26
 27 **11. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

28 ///

1 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
 2 Protected Material to any person or in any circumstance not authorized under this
 3 Stipulated Protective Order, the Receiving Party immediately must (1) notify in writing
 4 the Designating Party of the unauthorized disclosures, (2) use its best efforts to retrieve
 5 all unauthorized copies of the Protected Material, (3) inform the person or persons to
 6 whom unauthorized disclosures were made of all the terms of this Stipulated Protective
 7 Order, and (4) request such person or persons to execute the “Acknowledgment and
 8 Agreement to be Bound” (Exhibit A).

9
 10 **12. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
 11 **PROTECTED MATERIAL**

12 When a Producing Party gives notice to Receiving Parties that certain
 13 inadvertently produced material is subject to a claim of privilege or other protection, the
 14 obligations of the Receiving Parties are those set forth in Federal Rule of Civil
 15 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure
 16 may be established in an e-discovery order that provides for production without prior
 17 privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the
 18 parties reach an agreement on the effect of disclosure of a communication or information
 19 covered by the attorney-client privilege or work product protection, the parties may
 20 incorporate their agreement in the Stipulated Protective Order submitted to the Court.

21
 22 **13. MISCELLANEOUS**

23 13.1. Right to Further Relief.

24 Nothing in this Stipulated Protective Order abridges the right of any
 25 person to seek its modification by the Court in the future.

26 13.2. Right to Assert Other Objections.

27 By stipulating to the entry of this Stipulated Protective Order, no
 28 Party waives any right it otherwise would have to object to disclosing or

1 producing any information or item on any ground not addressed in this
 2 Stipulated Protective Order. Similarly, no Party waives any right to object
 3 on any ground to use in evidence of any of the material covered by this
 4 Stipulated Protective Order.

5 13.3. Filing Protected Material.

6 A Party that seeks to file under seal any Protected Material must
 7 comply with Local Rule 79-5. Protected Material may only be filed under
 8 seal pursuant to a court order authorizing the sealing of the specific
 9 Protected Material at issue. If a Party's request to file Protected Material
 10 under seal is denied by the Court, then the Receiving Party may file the
 11 information in the public record unless otherwise instructed by the Court.

12
 13 **14. FINAL DISPOSITION**

14 After the final disposition of this Action, within sixty (60) days of a written
 15 request by the Designating Party, each Receiving Party must return all Protected
 16 Material to the Producing Party or destroy such material. As used in this subdivision,
 17 “all Protected Material” includes all copies, abstracts, compilations, summaries, and any
 18 other format reproducing or capturing any of the Protected Material. Whether the
 19 Protected Material is returned or destroyed, the Receiving Party must submit a written
 20 certification to the Producing Party (and, if not the same person or entity, to the
 21 Designating Party) by the 60-day deadline that (1) identifies (by category, where
 22 appropriate) all the Protected Material that was returned or destroyed and (2) affirms that
 23 the Receiving Party has not retained any copies, abstracts, compilations, summaries or
 24 any other format reproducing or capturing any of the Protected Material.
 25 Notwithstanding this provision, Counsel is entitled to retain an archival copy of all
 26 pleadings; motion papers; trial, deposition, and hearing transcripts; legal memoranda;
 27 correspondence; deposition and trial exhibits; expert reports; attorney work product; and
 28 consultant and expert work product, even if such materials contain Protected Material.

Any such archival copies that contain or constitute Protected Material remain subject to this Stipulated Protective Order as set forth in Section 5.

15. VIOLATION

Any violation of this Stipulated Order may be punished by any and all appropriate measures including, without limitation, contempt proceedings and/or monetary sanctions.

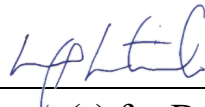
IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

Dated: 12/04/2023

/s/ NaShaun Neal

Attorney(s) for Plaintiff(s)

Dated: 12/04/2023



Attorney(s) for Defendant(s)

FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

Dated: December 5, 2023


Maria A. Audero

United States Magistrate Judge

EXHIBIT A**ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

I, _____ [full name], of _____
 _____ [address], declare under penalty of perjury that I have read in
 its entirety and understand the Stipulated Protective Order that was issued by the United
 States District Court for the Central District of California on _____ [date] in
 the case of _____ [case name and
 number]. I agree to comply with and to be bound by all the terms of this Stipulated
 Protective Order, and I understand and acknowledge that failure to so comply could
 expose me to sanctions and punishment in the nature of contempt. I solemnly promise
 that I will not disclose in any manner any information or item that is subject to this
 Stipulated Protective Order to any person or entity except in strict compliance with the
 provisions of this Stipulated Protective Order.

I further agree to submit to the jurisdiction of the United States District Court for
 the Central District of California for the purpose of enforcing the terms of this Stipulated
 Protective Order, even if such enforcement proceedings occur after termination of this
 action. I hereby appoint _____ [full name] of _____
 _____ [address and telephone number] as my California
 agent for service of process in connection with this action or any proceedings related to
 enforcement of this Stipulated Protective Order.

Signature: _____

Printed Name: _____

Date: _____

City and State Where Sworn and Signed: _____